Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Effect of Foreign Mobile Termination Rates	)	IB Docket No. 04-398
On U.S. Customers	)	

COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION™

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CTIA – The Wireless Association™ ("CTIA")[1] hereby submits its comments in response to the Notice of Inquiry ("*NOI*") in the above-captioned proceeding, which seeks to develop a record on foreign mobile termination rates ("MTRs") in calling party pays ("CPP") markets.[2] As the *NOI* established, foreign national regulatory authorities ("NRAs") worldwide have already taken action or initiated proceedings to lower MTRs. Given that foreign NRAs are intervening to lower MTRs and these regulated rates are benefiting both foreign *and* U.S. callers, there is no basis for the Commission to inject itself into purely domestic interconnection matters in foreign countries.

INTRODUCTION AND SUMMARY

As part of the *ISP Reform* proceeding, the Commission raised the issue of "whether US consumers could be paying rates for foreign mobile termination service that are unreasonably

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1 CTIA – The Wireless Association™ is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization includes Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

2 *See In the Matter of The Effect of Foreign Mobile Termination Rates on U.S. Customers*, IB Docket No. 04-398, Notice of Inquiry, FCC 04-247 (rel. Oct. 26, 2004)("*NOI*").

high or discriminatory."[3] In the *Report and Order* adopted in March 2004, the Commission committed to issue the instant *NOI* "to develop a record on foreign mobile termination rates."[4] CTIA submits that the record will demonstrate that U.S. international callers are not facing discriminatory mobile termination rates compared to domestic callers in foreign countries. Moreover, foreign NRAs, whose interests in protecting their consumers from unreasonably high mobile termination rates are the same as the Commission's, are taking steps to lower MTRs where necessary.

As the *NOI* observed, the United States is one of "a handful" of countries that follow the receiving party pays ("RPP") compensation scheme in which the mobile network operator charges its subscriber for airtime to receive calls.[5] In the overwhelming majority of countries, a CPP environment exists in which the mobile network operator charges its subscriber nothing to receive calls and instead charges the interconnecting operator to terminate the call. The Commission, however, is no stranger to CPP. In 1999, the Commission issued a declaratory ruling and initiated a proceeding in which it concluded that a CPP offering is a legitimate service option for CMRS carriers, subject to Section 332 of the Act.[6]

The Commission now asks about the pricing structure of mobile termination rates. At the outset, it is important to note that growth in mobile telephony and the fact that MTRs are

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[3] *Id.* at ¶ 7 (citing *International Settlements Policy Reform International Settlement Rates*, IB Docket Nos. 02-234 and 96-261, First Report and Order, 19 FCC Rcd 5709, 5749-51 (2004) ("*ISP Reform Order*")).

[4] *Id.* at ¶ 1.

[5] *Id.* at n.11.

[6] *See Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 10861 (1999) ("*CPP Declaratory Ruling/NPRM*"), *aff'd and proceeding terminated,* Memorandum Opinion and Order on Reconsideration and Order Terminating Proceeding, 16 FCC Rcd 8297 (2001), *aff'd on recon.,* Second Memorandum Opinion and Order on Reconsideration, 17 FCC Rcd 1909 (2002).

appearing on more U.S.-international routes should not be construed to mean that U.S. consumers are paying unreasonably high MTRs. Mobile termination rates are a legitimate and fundamental component of any CPP regime.[7] With respect to the level of mobile termination rates, NRAs in many countries have engaged in proceedings to examine MTRs and ongoing proceedings exist in many other countries. In contrast to the Commission's benchmarks proceeding, U.S. interests are aligned with their foreign counterparts and NRAs' actions to lower MTRs have benefited both foreign callers *and* U.S. callers. Commission analysis of whether MTRs are "unreasonably high" would necessarily entail a detailed undertaking of the policy and economic underpinnings of CPP and individual countries' costs and cost modeling – a task far better left to individual NRAs. The Commission should instead focus on an issue far more germane to its public interest obligation -- whether foreign operators impose discriminatory mobile termination rates against U.S. consumers.

I. TRAFFIC FLOWS OUT OF THE UNITED STATES PREDOMINANTLY TERMINATE IN COUNTRIES WHERE FOREIGN REGULATORS ARE LOWERING MOBILE TERMINATION RATES

Fundamentally, the *NOI* raises the basic question of whether foreign MTRs are a problem warranting formal Commission intervention. In this regard, the Commission seeks information and data on basic trends and statistics in the mobile industry, such as "the growth trends of mobile subscribership and traffic worldwide."[8] The *NOI* provides the Commission with the opportunity to consider MTRs in the context of the U.S. international telecommunications marketplace *before* assessing whether any Commission action is appropriate. The evidence

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[7] *See* Gregory J. Sidak and Robert Crandall, *Should Regulators Set Rates to Terminate Calls on Mobile Networks?*, 21 Yale J. on Reg. 261, 267 (2004).

[8] *NOI* at ¶ 13.

demonstrates that while U.S. international traffic to mobiles is increasing, mobile termination rates are decreasing.

As mobile telephony continues to grow rapidly worldwide, and as downward pressure on international rates makes overseas calling more and more affordable for U.S. consumers, it is not surprising that increasing amounts of U.S.-outbound traffic terminate on foreign mobile operators' networks. These trends do not, however, occur in isolation. Most traffic terminating on foreign mobile and fixed networks continues to be domestic in nature (*e.g.*, U.K.-to-U.K., Japan-to-Japan), and as a result only a small percentage of foreign mobile network operators' inbound international traffic originates from the United States.[9] Most significantly for the Commission's purposes, the Commission's own Section 43.61 traffic reports reveal that a substantial percentage of U.S.-outbound traffic is concentrated in a few high traffic destination markets, much of which is in "receiving party pays" ("RPP") markets such as Canada and Mexico (although Mexico is moving toward a regulated CPP regime), or is in markets already subject to reductions in MTRs or heightened oversight by NRAs, such as the United Kingdom (and Western Europe generally) and Australia.

Aggregate trend data from TeleGeography on mobile traffic flows and estimated mobile termination payments also indicate that for nine of the top ten destinations for mobile terminated calls, traffic to mobiles grew 75 percent from 2001 to 2003, while total mobile termination payments *fell* 14 percent. In effect, the average mobile termination cost fell by 50 percent

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[9] For example, only 16 percent of all international traffic terminating in Europe in 2003 originated in the U.S., according to data from TeleGeography. And U.S.-originated traffic terminating on *mobiles* in Europe amounted to only three percent of all international traffic terminating in Europe. For purposes of responding to the *NOI,* CTIA engaged TeleGeography to provide relevant data, January 2005. TeleGeography, a research division of PriMetrica, publishes reports and data on global telecommunications networks and traffic statistics, including *TeleGeography 2005, Global Traffic Statistics and Commentary.*

between 2001 and 2003 for nine of those countries. In the tenth country, traffic grew more than 42 percent between 2002 and 2003, while the TeleGeography data suggests total mobile termination payments remained flat – clearly indicating that MTRs fell significantly during that period.[10]

Furthermore, the Commission's overview of foreign NRA actions concerning MTRs underscores that NRAs are taking regulatory actions and MTRs are trending downward.[11] Interexchange carriers' ("IXCs") presentations of a "snapshot" view of MTRs, as well as the limited data provided in the *NOI*, neglect these important trends.[12] As mentioned above, NRAs in a number of countries already have initiated regulatory proceedings, and where NRAs have acted MTRs are coming down. In December 2004 the European Commission reported that for a large group of EU nations, the MTRs of "SMP" operators (*i.e.* mobile operators deemed to have "significant market power" for EU regulatory purposes) fell an average of 33 percent between 2001 and 2004 and further, in 2004 rates for all operators, including non-SMP operators, decreased by 13-14 percent.[13]

As the Commission notes in the *NOI*, even for those markets where rates did not decrease during the most recent period, including France, Italy and Germany, either NRAs have recently taken action or mobile operators themselves have agreed to reductions.[14] The EC's report,

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[10] TeleGeography data (January 2005).

[11] *See NOI* at App. B (noting that NRAs in Australia, Belgium, Finland, France, The Netherlands, Spain, Sweden and the United Kingdom have all imposed reductions in MTRs, and that NRAs in other countries are considering like action).

[12] *See id.* at Apps. C-D.

[13] *See* Commission of the European Communities, *European Electronic Communications Regulation and Markets 2004 (10th report)*, Volume II at Annex 3, Market Overview, p.36 ("Tenth Report").

[14] *See NOI* at App. B.

moreover, concluded that "further reductions will undoubtedly follow from intervention by NRAs."[15] As the Commission acknowledges, Australia and New Zealand have initiated proceedings as well.[16] Thus, to the extent there is a problem with MTRs, NRAs already are intervening to impose reductions.

II. THE COMMISSION'S ANALYTICAL FRAMEWORK SHOULD FOCUS ON WHETHER FOREIGN OPERATORS IMPOSE DISCRIMINATORY RATES ON U.S.-ORIGINATED MOBILE-BOUND TRAFFIC

The Commission seeks comment on the appropriate analytical framework "(1) to evaluate the data on [MTRs] and mobile settlements and (2) to determine whether these rates are unreasonably high."[17] CTIA submits that the issues presented by MTRs are analytically distinct from the concerns that led to Commission action in the *Benchmarks* context. In contrast to the international settlements regime that led to the Commission's *Benchmarks* approach, MTRs do not discriminate against U.S. callers and are not using the U.S. accounting rate regime to subsidize foreign operations or government coffers. In addition, foreign NRAs across the globe are actively investigating and intervening to lower mobile termination rates – to the benefit of both foreign and U.S. callers. Moreover, Commission analysis of whether MTRs are "unreasonably high" would necessarily entail a detailed undertaking of the policy and economic underpinnings of CPP and individual countries' costs and cost modeling – a task individual NRAs are uniquely situated to handle. As the European Commission noted in a letter to Chairman Powell in March 2004, NRA action "should be preferred to the adoption by the Federal Communications Commission of any other measure" – and NRAs are acting to lower

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[15] Tenth Report at Annex 3, p. 4.

[16] *See NOI* at App. B.

[17] *Id.* at ¶ 24.

mobile termination rates.[18] In short, absent evidence that foreign operators are using discriminatory mobile termination rates at the expense of U.S. consumers, it would be contrary to principles of international comity for the Commission to in effect seek to regulate domestic termination rates in foreign countries.

A. The Commission Should Focus on Whether Foreign Fixed Line Operators Discriminate Against International or U.S.-Originated Traffic

The Commission appropriately expresses "concern[] about whether U.S. customers may be paying rates that are discriminatory" and "whether discriminatory foreign mobile termination charges have been imposed on U.S. international carriers."[19] There is no reasonable basis for discriminatory mobile termination rates. First, while there are significant differences between fixed and mobile termination costs, there are no differences between mobile termination costs for domestic-originated and international-originated traffic. Second, if discrimination were to occur it could be completely unrelated to mobile termination rates and could instead be the result of a mark-up by the foreign fixed-line operator or the U.S. IXC. Provided that there is no discrimination against inbound international traffic, U.S. carriers will benefit from NRAs' actions to lower MTRs. U.S consumers, in turn, should benefit as well – so long as foreign fixed-line operators and U.S. IXCs pass through reductions to their customers.

Given these important policy considerations, CTIA believes that the Commission should focus its inquiry on whether foreign operators are imposing discriminatory rates against U.S. or international mobile-bound traffic and whether U.S. IXCs pass through all reductions in a timely manner. For now, the Commission's record in the *ISP Reform* proceeding reveals no instances

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[18] Letter from Erkki Liikanen, Member, European Commission, to the Honourable Michael K. Powell, Chairman, FCC, IB Docket No. 02-324 (filed Mar. 4, 2004).

[19] *NOI* at ¶ 16.

of discrimination against international inbound traffic in countries where MTRs are an issue.[20] Moreover, the *ISP Reform* proceeding indicates that there is a consensus that the Commission has a legitimate role in this regard.[21] An ongoing U.S. Government focus on nondiscrimination will ensure that U.S. carriers and consumers continue to enjoy the downward trend occurring in mobile termination rates as a result of NRAs' actions on the domestic front.

B. Any Comparison to the 1997 *Benchmarks* Proceeding is Wholly Inappropriate

The concerns that have been presented in this NOI examining MTRs are quite different from the circumstances facing the U.S. Government at the time of the *Benchmarks* proceeding. As the Commission observed in the *Benchmarks Order*, its action there came after years of efforts in bilateral and multilateral fora to address discriminatory accounting rates subsidizing foreign (often monopoly) operators – with limited results.[22] Because high settlement rates targeted U.S. and other foreign callers, many foreign regulators did not object to maintaining the status quo despite the Commission's efforts. The *Benchmarks* proceeding was thus necessary because, absent U.S. Government action, U.S. consumers would continue to be subjected to significant discrimination. Here, by contrast, MTRs affect all callers, and all originating carriers (domestic and international) and foreign regulators are aligned with their U.S. counterparts in seeking to lower unreasonably high MTRs. NRAs have already demonstrated a commitment to

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[20] This should not be surprising. A policy of nondiscrimination is consistent with WTO Members' obligations under the GATS Annex on Telecommunications and the Reference Paper. General Agreement on Trade in Services, Annex on Telecommunications, § 5(a); *see Benchmarks Order*, 12 FCC Rcd at 19848-49.

[21] *See* Comments of Sprint, IB Docket No. 96-261, at 19, 22 (filed Jan. 14, 2003); Comments of Verizon, IB Docket No. 96-261, at 10 (filed Jan 14, 2003); Comments of Vodafone, IB Docket No. 96-261, at 9-11 (filed Jan. 14, 2003); *see also* Comments of GSM Europe, IB Docket No. 96-261, at 5 (filed Jan 15, 2004).

[22] *See Benchmarks Order*, 12 FCC Rcd at 19809.

take action, and MTRs are coming down. There is no reason to believe that these trends will not continue given foreign regulators' and originating fixed line carriers' attention to the issue. Commission action is thus unwarranted and unnecessary.

The Commission requests comment "on other concerns raised in the *ISP Reform* proceeding such as ... the specific application of the 1997 benchmarks policy to foreign mobile termination rates."[23] CTIA previously demonstrated that "the benchmarks developed by the Commission were intended to apply to the foreign carriers with which U.S. carriers had traditional fixed line correspondent relationships."[24] Indeed, it does not appear that the Commission considered the underlying tariffs for mobile services at all.[25] Benchmarks were designed to address circumstances in which foreign carriers – in many instances carrying out foreign government policy – sought to subsidize their fixed line and principally monopoly operations via extraordinarily high accounting rates imposed on U.S. carriers and consumers. MTRs, in contrast, are purely a domestic interconnection matter. There is no evidence here that foreign mobile network operators discriminate against U.S. carriers or consumers in such matters and no evidence that MTRs are somehow being used anticompetitively against U.S. IXCs.

A determination of MTR costs under CPP regimes in competitive wireless markets is a fundamentally different exercise than the Commission's use of tariffed components as a proxy for the cost of terminating international fixed line calls. The Commission relied on long-established tariffed costs in crafting the *Benchmarks* regime, whereas the costs of mobile termination remain under study and consideration in various CPP regimes. Further, one cannot reasonably engage in a comparison of termination rates between CPP and RPP regimes because

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[23] *NOI* at ¶ 17.

[24] *Ex Parte* Comments of CTIA, IB Docket No. 02-324, at 2 (filed Mar. 4, 2004).

[25] *See id.*

of underlying differences in demand conditions and other factors inherent to the different regimes. Finally, the *Benchmarks* regime was based on settlements involving direct contractual arrangements between fixed line carriers with payments based on the exchange of traffic, whereas U.S. IXCs and foreign mobile operators have no direct contractual relationship.[26]

C. Foreign Mobile Termination Rates Are Regulated by Foreign Regulators, and the FCC Should Not Second Guess Their Analytical Frameworks

The fact that MTRs are appearing on more U.S.-international routes should not be construed to mean that U.S. consumers are paying unreasonably high MTRs, as WorldCom and others would have the Commission believe.[27] MTRs are an integral and legitimate component of a CPP regime, and the mere presence of an MTR in a particular country or on a U.S.-international route in itself is entirely appropriate. As the Commission acknowledges in the *NOI*, a number of NRAs are taking action or have initiated proceedings to examine their domestic MTRs.[28] In the years since the Commission raised the issue of MTRs in the *ISP Reform* proceeding, more NRAs have initiated such proceedings and, almost uniformly, those NRAs have required reductions in MTRs or the mobile operators themselves have agreed to such

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[26] *See, e.g.,* Cable & Wireless Comments at 16-19; Sprint Comments at 19-20; PCCW Ltd. Comments at 6. It is the U.S. IXC's contractual relationship with the foreign fixed line operator that brings the settlement arrangement within the Commission's purview. *See Benchmarks Order*, 12 FCC Rcd at 19818 ("International telecommunications services that are settled *under a settlement rate agreed to by a U.S. international carrier and its foreign correspondent* fall within the definition of 'foreign communication' in the Act and settlement rates are a 'charge' or 'practice.' We thus find that the plain language of Section 201 gives us jurisdiction over settlement rates." (emphasis added)), *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999) ("we must sustain the Commission's view as long as the Order reasonably represents an exercise of its statutory authority to regulate domestic carriers engaged in foreign telecommunications").

[27] *See, e.g.* Comments of WorldCom, IB Docket No. 96-261, at 20-23 (filed Jan. 14, 2003)("WorldCom ISP Reform Comments").

[28] *See NOI* at App. B.

reductions. Absent evidence of discrimination aimed at U.S. carriers and consumers, the Commission should not second-guess the outcomes of NRAs' proceedings.

NRAs have looked at the issue over the course of several years and engaged in painstaking review and analysis of the lengthy and detailed submissions of the affected carriers. Absent a comparable commitment of Commission resources, it would be presumptuous for the Commission to assume that it can more effectively analyze such costs or set an appropriate rate or range of rates. Nor should the Commission effectively seek to micromanage how the NRAs go about their decisionmaking processes by seeking to indirectly impose a particular cost model or ratemaking methodology. Moreover, the appropriate level of MTRs will vary from country to country. Different rates occur in different markets because of varying input costs (*e.g.* the costs of spectrum), demographical differences, and regulatory schemes. Thus, Ofcom's findings with respect to the U.K., for example, are of only limited use as to MTRs in other CPP countries.[29]

In its comments in the *ISP Reform* proceeding, WorldCom makes a number of undocumented estimates, including the claim that MTRs "cost U.S. consumers and carriers more than $368 million" and $14-25 million each for the Germany, France, U.K. and Japan routes alone. These estimates are, at best, high-level extrapolations based on its own conclusion as to "what actual mobile termination cost should be," together with Section 43.61 traffic volume data.[30] Again, some perspective is in order. In creating these figures, WorldCom relies on mobile termination cost estimates derived in a RPP, not CPP, environment and in doing so fails to account for the significant differences between the two regimes. WorldCom thus understates foreign mobile operators' termination cost structures and the benefits that inure to U.S. consumers' ability to call foreign mobile subscribers. Further, WorldCom fails to account for the

[29] *Id.* at ¶ 35.

[30] *See* WorldCom ISP Reform Comments at 22, n.39.

pricing behavior of intermediary carriers including foreign fixed-line operators and U.S. IXCs. Such analysis should be roundly rejected.

Finally, it should be noted that markets are evolving and changing rapidly. NRAs themselves, given their proximity to market data on which their regulatory decisions are based, clearly are best equipped to address these issues as they arise. Thus, the regulatory implications of the intercarrier compensation programs that have evolved in response to market competition in CPP regimes, such as off-net/on-net differentiation, are best left to the NRAs in the affected markets.[31]

Indeed, in light of its efforts to promote independent regulatory authorities across the globe, the Commission should scrupulously avoid undermining the very domestic fixed-mobile interconnection regime that most NRAs worldwide have embraced. In sum, CTIA firmly believes that the economics underlying a CPP regime are "a policy choice for individual countries that should not be challenged by the Commission."[32]

D. The Commission Is Not Positioned to Engage in Its Own Cost Modeling Exercise for Foreign Mobile Termination Rates

The Commission also seeks comment on whether the standards used in various NRAs' cost studies of MTRs "could serve as a useful framework" for the Commission's purposes and in particular "on whether these studies may or may not be the appropriate model when applied to markets where mobile services are not subject to rate regulation."[33] As noted above, foreign NRAs' efforts to regulate MTRs have entailed years of proceedings and analysis. As the Commission is aware from its own experience in the universal service and interconnection

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[31] *See NOI* at ¶ 11.

[32] *Id.* at ¶ 10.

[33] *Id.* at ¶ 29.

contexts, this process is difficult and time-consuming. Given that NRAs already are addressing MTRs, and that MTRs are trending downward, it is unnecessary and misguided for the Commission to delve into the particular cost modeling approach, or to advocate a particular approach, undertaken by another NRA.

Nor would it make any sense for the Commission engage in its own cost modeling for purposes of determining an "optimal" MTR. The United States has an RPP regime and has no significant experience with CPP as a business model. Indeed, given the U.S.'s RPP approach and the competitiveness of its wireless industry, the Commission has little experience with or need for cost modeling for wireless termination in the U.S. generally -- let alone under the varying cost structures found in other nations. Again, unless an NRA's acts or omissions allow for discrimination against international or U.S. consumers or carriers, it is unnecessary for the Commission to second-guess NRAs. Analysis of cost models is unnecessary in such circumstances as well, as discriminatory MTRs can be detected using more objective criteria.

The Commission in particular should reject AT&T's Revised TCP ("R-TCP") methodology.[34] As discussed above, the TCP methodology used for developing settlement rate benchmarks is inappropriate for MTRs. For many of the same reasons, AT&T's R-TCP approach is analytically and factually flawed. To a large extent, AT&T's R-TCP framework involves the *Benchmarks* TCP framework and simply assumes that the various cost inputs are numerically lower. As the Commission recognizes, however, the R-TCP methodology entails costs unrelated to the costs recovered by MTRs.[35]

Finally, the *NOI* itself underscores the difficulties inherent in developing a framework for analyzing MTRs. Even as the Commission inquires as to the usefulness of the Ofcom

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[34] *Id.* at ¶ 27.

[35] *Id.* at ¶ 28.

conclusions in establishing a framework for evaluating MTRs, it also seeks comment on the Charles River Report which explains the difficulties in developing cost models and determining an economically efficient MTR.[36] The Charles River Report raises legitimate concerns regarding the limits of regulators' ability to derive an optimal MTR. As the Commission appears to acknowledge, and CTIA agrees, "identifying reasonable [MTRs] involves more than studies of the incremental cost of mobile termination service."[37]

As noted above, MTR-related proceedings are domestic interconnection matters before NRAs. Nonetheless, provided that foreign governments enforce nondiscrimination obligations, domestic and U.S. international consumers' interests are aligned such that MTR reductions imposed by NRAs will result in lower termination rates for both domestic and international traffic. U.S. consumers will therefore benefit from measures taken by NRAs provided that (1) foreign fixed line operators pass through their savings to the U.S. corresponding carrier, and (2) U.S. IXCs pass on those savings to their own end user customers via reductions in mobile surcharges.

CONCLUSION

NRAs in many countries have engaged in proceedings to regulate MTRs and ongoing proceedings exist in many other countries. In contrast to the Commission's benchmarks proceeding, U.S. interests are aligned with their foreign counterparts and NRAs' actions to lower MTRs have benefited both foreign callers and U.S. callers. Commission analysis of whether MTRs are "unreasonably high" would necessarily entail a detailed undertaking of the policy and economic underpinnings of CPP and individual countries' costs and cost modeling – a task far

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[36] *Id.* at ¶¶ 33-35.

[37] *Id.* at ¶ 32 n. 91.

better left to individual NRAs. The Commission should instead focus on the more objective determination of whether foreign operators impose discriminatory mobile termination rates against U.S. consumers.

Respectfully submitted,

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